COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL

(1)Appeal from Order No. 226 of 2004

The Oriental Insurance Co. Ltd.…. **Appellant.**

Versus

Sri Bhopal Singh
and others. ……**Respondents.**

(2)Appeal from Order No. 224 of 2004

The Oriental Insurance Co. Ltd.…. …. **Appellant.**

Versus

Smt. Tulsi Karki
and others. ……**Respondents.**

And

(3)Appeal from Order No. 225 of 2004

The Oriental Insurance Co. Ltd.…. …. **Appellant.**

Versus

Sri Liladhar Bhatt
and others. ……**Respondents.**

Coram: Hon'ble P.C.Verma, J.,
Hon'ble B.S. Verma, J.

All these appeals arise out of the same motor accident and out of the common judgment and award passed by the Tribunal and similar questions are involved for determination in these appeals, therefore, all the cases are being disposed of by this common judgment.

All these appeals have been preferred under Section 173 of the Motor Vehicles Act, 1988, ***(in short the Act)*** against the judgment and Award dated 24-4-2004 passed in M.A.C. Case No.

5 of 1999, Sri Bhupal & others Vs. M/s Jalpac India Limited & others, M.A.C. No. 15 of 1999, Smt. Tulsi Devi & others. Vs. M/s Jalpac India Ltd. & others and M.A.C.P. No.01 of 1999, Liladhar Bhatt Bhatt & others Vs. M/s Jalpac India Ltd. and others by Motor Accident Claims Tribunal/ District Judge, Nainital (***(in short the Tribunal),*** whereby the learned Tribunal has allowed each the claim petition and has awarded Rs.6,67,000/- as compensation along with interest @ 9% per annum, as mentioned in the impugned order, in favour of the claimant-respondent No. 4 Smt. Nandi Devi against the O.P. No.2-appellant in the first case under Section 166 of the Act. In the second case, claimant no. 1 Tulsi Karki has been awarded sum of Rs. 1,20,000/- as compensation along with interest @ 9% per annum, In the last case, claimants Liladhar Bhatt and Savitri Devi have been awarded compensation worth Rs. 1,20,000/- along with interest @ 9% per annum, as mentioned in the impugned order. Aggrieved, the Insurance Company-appellant has come up in appeal for setting aside the impugned judgment and award passed by the learned Tribunal mainly on the ground that the driver of the vehicle involved in the accident was not holding a valid driving licence, nor he was appointed as such by the insured and that the vehicle involved in the accident was not legally transferred in the name of R.P.Bansal, who has not been arrayed as party and the Tribunal has failed to appreciate the evidence on record properly.

Brief facts, giving rise to the present appeal, are that in the night of 16/17-07-1998 Shankar Datt Bhatt, Mahendra Singh Bisht and Hayat Singh Karki (***the deceased***) were coming back to Haldwani from Nainital by Maruti Car No. WNW-3745, driven by Rajeev Kumar Agrawal alias Ritesh Bansal alias Monti. The driver was driving the said car rashly and negligently and as soon as the said car near the bend of Observatory, it fell into a ravine with the result all the aforesaid persons Shankr Datt Bhatt, Mahendra Singh Bisht and Hayat Singh sustained grievous injuries and Shankar Datt and Hayat Singh died on the spot, while the third person Mahendra Singh succumbed to his injuries in the A.I.I.M.S. Delhi. Deceased

Mahendra Singh was aged 28 yeas and it has been alleged that he was earning Rs. 1,00,000/- per annum. Claim Petition No. 5 of 1999 has been field for compensation for his death. Deceased Shankar Datt was aged 26 years and he was earning Rs. 5,000/- per month. Claim Petition No. 1 of 1999 has been preferred by his dependents/legal heirs for compensation, while Claim Petition No. 15 of 99 has been preferred by the legal heirs/dependents of the deceased Hayat Singh Karki alleging that the deceased was aged 26 years and he was earning Rs. 5,000/- per month.

The Opposite Parties in all the cases have taken similar stand in their written statements. O.P.No.1 has asserted in its written statement that the illfated Maruti car was registered in the name of Eithalbold Estate Pvt. Ltd. and he said vehicle was sent to O.P.No.1 on 13-8-1990 for use by the General Manager of the O.P.No.1 at Haldwani. Subsequently, this car was sold to Sri R.P. Bansal on 15-2-1994. After the sale of the Maruti Car, said R.P.Bansal is the owner of the vehicle and the O.P.No.1 has no concern with it. It has been alleged that Rajeev Kumar Agrawal is the driver of the said car, who was not employee of the O.P.No.1, therefore, the O.P.No.1 is not liable to pay compensation.

O.P.No.2-appelalnt has alleged in its written statement that the deceased Shankar Datt and his two associates had taken the vehicle from the Factory be force, which fell in the Khadd and the vehicle was not being plied for the purpose of the Factory and there was no relationship of driver and owner of the vehicle, therefore, the Insurance Company is not liable to pay compensation. It has been pleaded that compliance of Section 164 of the Act as not being adhered to, therefore, the appellant-Insurance Company is not liable to pay compensation.

O.P. Nos. 3 and 4, R.P.Bansal and Rajeev Kumar, have pleaded that they have been wrongly impleaded in the case.

On the pleadings of the parties, the lenred Tribunal framed as many as five Issues in the case. Ultimately, the Tribunal has held on Issue No. 1 that the motor accident resulting into injuries and consequent death of the deceased was caused due to rash and negligent driving of the driver of ill-fated car, Rajeev Kumar Agrawal. The learned Tribunal took Issue Nos. 2,3 and 4 together and has come to the conclusion that the sale of the vehicle in favour of Rs. Bansal has no bearing in the case and the Insurance Policy stands in existence in the name of O.P.No.1, therefore, the Insurance Company is liable to pay the compensation. Finally, the learned Tribunal has awarded the compensation in favour of the claimants as mentioned earlier.

We have heard learned counsel for the appellant, Sri Tanveer Alam Khan as well as learned counsel for the respondents Sri Anil Kumar Sah, Sri G.B.Pande, Sri Neeraj Upreti , Sri B.K.Gupta, and have carefully gone through the entire material available on record including the impugned judgment and award.

It has been vehemently argued on behalf of the appellant that the vehicle was not legally transferred in the name of Mr. R.P.Bansal and he was not arrayed as party to the proceedings, therefore, the finding of the lenred Tribunal is perverse and not sustainable. We have considered the submissions made by the learned counsel on this score.

The contention of the learned counsel for the appellant that Sri R.P.Bansal, in whose name the vehicle was transferred was not made a party is totally misconceived. From the record, it is evident that Sri R.P.Bansal has been arrayed as O.P.No.3 in the claim petition and he has also field his written statement. It is true that the Maruti Car No. WNW-3745 was insured in favour of M/s Jalpac India Pvt. Limited and that this vehicle was sold in the name of Sri R.P.Bansal. This fact is corroborated by the statement of D.W.1 Kundan Singh Mehta. D.W.2, Jeewan Bhauguna, who has

been examined on behalf of the Insurance Company-appellant has stated on oath that the said vehicle was insured for third party risk by the appellant-company, but there was no insurance for passengers. It is on the strength of the deposition of this witness, D.W.2, it has been submitted that the Insurance Company is not liable to pay compensation for the injuries or death of the passengers traveling by the said vehicle. It is admitted to the Insurance Company that the vehicle was insured to cover third party risk. Insurance Policy (paper no. 5-C/4) is on the record of M.A.C. Claim Petition No. 1 of 1999. From a perusal of the Insurance Policy, it is evident that vehicle was authorised to carry four persons, therefore, we are of the consistent view that the Insurance Company was liable to cover the third party risk in the present case, even if the owner or purchaser has not given any intimation of transfer of vehicle to the Insurance Company. We are supported in our view by the Hon'ble Apex Court verdict in the case of ***"Rikhi Ram and another Vs. Sukharania (Smt) and others" [2003] 3 Supreme Court Cases, 97].*** In Paragraph 3 of the judgment, the Apex Court has inter-alia observed that ***"However, we would like to give further reasons that the liability of an insurer does not come to an end even if the owner of the vehicle does not give any intimation of transfer to the insurance company".*** In para no. 7 it has been observed by the Hon'ble Supreme Court that ***"we hold that whenever a vehicle which is covered by the insurance policy is transferred to a transferee, the liability of the insurer does not cease so far as the third party/victim is concerned, even if the owner or purchaser does not give any intimation as required under the provisions of the Act."*** Similar view has been taken by the Apex Court in the case of ***"G.Govindan V. New India Assurance Co. Ltd. [(1999) 3 SCC, 754]*** and it has been held in this case that since insurance against third party is compulsory, and once the insurance company had undertaken liability to third party 8incurred by the persons specified in the policy, the third party's right to recover any amount is not affected by virtue of the provisions of t he act or by any condition in the policy. The facts of the present case are fully covered by the

verdict of the Hon'ble Supreme Court given in the aforementioned two cases. None of the contentions raised on behalf of the appellant-Insurance Company is tenable.

It has been lastly contended n behalf of the appellant that the deceased persons were gratuitous passengers in the Maruti Car, therefore, in view of the case-law laid down by the Hon'ble Apex Court in the case of ***Dr. T.V.Jose Vs. Chacko P.M. alias Thankachan and others [2001] 8 Supreme Court Cases 748]***, the liability of the insurer towards third party risk under the Policy does not cover liability towards gratuitous passengers. We are in full agreement with the view taken by the Hon'ble Apex Court in the aforesaid case. But in the instant case, the appellant-Insurance Company has failed to prove on record that the deceased persons were gratuitous passengers. It is true that in its written statement, in the additional pleas, a plea has been raised by the appellant that the deceased persons have forcibly took away the Maruti Car No. WNW-3745 form the factory of respondent no.1, but the appellant has failed to lead any evidence worth the name on this count. Had it been a factual position, at least F.I.R. to that effect would have been lodged by the respondent no.1. The most important aspect of the case, which goes to the root of the matter, is that none of the witnesses produced from the side of the opposite-parties including the appellant has said a single word that the deceased persons had forcibly took possession of the ill-fated Maruti Car or that they were gratuitous passenger in the vehicle involved in the accident. There is no finding to that effect in the impugned judgment and award. There is clear-cut finding of the learned Tribunal that in the policy, it did cover third party risk for four persons. The learned Tribunal has found that the vehicle was not being driven for persons use of Sri Rajeev Kumar, who was driving the Maruti Car on the fateful day, therefore, by no stretch of imagination, it can be said that the deceased persons were gratuitous passengers, especially when the stand taken by the appellant-Insurance Company is that the deceased persons had forcibly took over possession of the vehicle from the

factory of respondent no.1. The contention of the appellant is not substantiated either by any documentary evidence or by oral evidence. In our view, the appellant cannot take benefit from the law laid down by the Hon'ble Apex Court in the case of ***Dr. T.V.Jose (supra).*** Mere plea cannot take the seat of proof. Had the appellant been able to prove that the deceased were gratuitous occupants in the car, the appeal was liable to be allowed on this ground alone; but the appellant has failed to substantiate its case before the learned Tribunal.

No other point was urged or argued before us in these appeal.

In the result, the appeal is devoid of merit and are liable to be dismissed.

All the three appeals, preferred by Oriental Insurance Company-appellant, are dismissed. The judgment and awards, under appeal, is upheld. No order as to costs.

The amount in deposit with this Court shall be remitted to the Motor Accident Claims Tribunal concerned, for being paid to the claimants.

27-09-2004 **(B .S.Verma, J.)** **(P.C. Verma, J.)**
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